

(Off the record comment)

JUDGE SIPPEL: All right. We'll say Friday, this Friday by 1:00? Okay, or any time before that that you want to give me something.

MS. KANE: And what you're asking for is a status report from the parties about whether --

JUDGE SIPPEL: Basically.

MS. KANE: Right.

JUDGE SIPPEL: Basically, that's it.

MR. STENGER: Your Honor, may I ask another question, because --

JUDGE SIPPEL: Very briefly.

MR. STENGER: -- of something else that Ms. Kane said is raising a concern. I mentioned before that when she talked about the burdensomeness of doing a trial brief I got a little bit alarmed, because I thought that my motion was pretty much sufficient for that.

She's now talked about the burden for preparing for the hearing, so I just want to make sure as to what kind of hearing we're talking about. I mean, as far as I understand it, the Bureau is going to submit, or has already submitted the written direct testimony of its witnesses. Mr. Keller has no witnesses. I have one witness, a lot of whose testimony is going to be struck out.

JUDGE SIPPEL: Not all of it, no, no.

MR. STENGER: Well, part of it is.

1 JUDGE SIPPEL: Yes.

2 MR. STENGER: As I understand it, the Bureau is not going
3 to cross-examine their own witnesses, so they're not preparing for
4 that. Mr. Keller will cross-examine the Bureau's witnesses, who are
5 really his clients. I suppose if he asks something, they might ask
6 some redirect questions. If Mr. Keller decides not to cross-examine
7 his own clients, and I decide not to cross-examine them because
8 I've already said that everything that they've said amounts to
9 nothing as far as I'm concerned, I'm not sure --

10 JUDGE SIPPEL: Mr. Havens may want to cross-examine them.

11 MR. STENGER: That's possible. Well, actually, I believe
12 Your Honor indicated that there would not be duplication, and it
13 would be either me --

14 JUDGE SIPPEL: Right.

15 MR. STENGER: -- or none.

16 JUDGE SIPPEL: And you said if you don't cross-examine. I
17 take that to mean you're going to sit there like a potted plant and
18 he can do the work.

19 MR. STENGER: No, no, that's not what I meant.

20 JUDGE SIPPEL: I don't care who --

21 MR. STENGER: If neither myself nor Mr. Havens cross-
22 examines the witnesses --

23 JUDGE SIPPEL: Okay.

24 MR. STENGER: I'm just trying to imagine, the Bureau just
25 said it's going to be very burdensome to prepare for the hearing.

1 I'm wondering if I'm not understanding something about the hearing.

2 My understanding is they put in their written direct
3 testimony, Mr. Keller can cross-examine the witnesses if he so
4 desires, I can cross-examine them, they can redirect. But it
5 doesn't sound like it's going to be a very lengthy, difficult
6 hearing, unless I'm missing something. I just want to make sure
7 that that's how it works. They just put in the written testimony,
8 say do you want to cross-examine? And I would imagine that that
9 would be a fairly short process. I just want to make sure I'm not
10 misunderstanding something that I'm supposed to be preparing to do.
11 I don't want to disappoint Your Honor, you know, at the hearing.

12 JUDGE SIPPEL: Well, you may want to -- I mean, you can't
13 do it before the hearing, but you may want to take a PLI course on
14 how to handle administrative hearings. This is routine stuff. I
15 mean, I can't predict how long it's going to take witnesses to get
16 on and off the stand. It's amazing what happens.

17 MR. STENGER: But they will not adduce their direct -- I
18 mean, a PLI course is great, but I've been in hearings before Your
19 Honor in the old days in comparative broadcast hearings.

20 JUDGE SIPPEL: Oh.

21 MR. STENGER: They just put in --

22 JUDGE SIPPEL: You're an old hand at this.

23 MR. STENGER: Yes, they just put in the written testimony,
24 and then offer the witness for cross-examination by others.
25 Correct?

1 JUDGE SIPPEL: Yes.

2 MR. STENGER: The only witness that the Bureau could
3 possibly be cross-examining would be Steve Calabrese. So, the
4 Bureau is preparing to cross-examine one witness, and they may ask
5 questions on redirect if Mr. Keller and I cross-examine their
6 witnesses. But that doesn't seem like -- you know, it was said that
7 there was a big burden. I just want to make sure I'm not missing
8 something. It doesn't sound like a big burden to me.

9 MS. KANE: Your Honor, I think what we were suggesting is
10 that we have several things to do before we actually commence the
11 hearing, including a substantive trial brief which is due less than
12 three weeks from now, or actually just three weeks from now, so
13 that's pretty burdensome. And as -- you know, perhaps Mr. Stenger
14 doesn't find providing trial briefs to be a challenge, or time
15 consuming but there's a substantial amount of evidence in the
16 record, and it will take some time to provide a substantive trial
17 brief that will actually assist Your Honor and his staff.

18 JUDGE SIPPEL: I know the Bureau has a reputation for
19 doing very thorough work. I'm not going to second guess anything
20 Ms. Kane is saying to me here. She's the one that has to assess
21 what her workload is, and I can't think that I'm being misled on
22 that one little bit.

23 I'm going to do what I said I'm going to do. I'm going to
24 get you an outline of what is that I require so that you can
25 reflect on that, and see -- you know, if you say that's all I'm

1 going to do, and I'm going to stick by the dates thus far and we'll
2 see what happens on Friday. That's all I can say.

3 MS. KANE: Your Honor, when might we expect an order on
4 the admission of Mr. Havens' and Mr. Stenger's exhibits?

5 JUDGE SIPPEL: When do you expect -

6 MS. KANE: I believe you said you were going to issue an
7 order on whether or not his exhibits were going to be entered into
8 evidence. It would be helpful as we are preparing for the trial
9 briefs to know when that order might be --

10 MR. ENGEL: The groupings order you discussed.

11 MS. KANE: The groupings order you discussed about his
12 written -- his documents.

13 JUDGE SIPPEL: You know we don't give dates like that. I
14 mean, I'm going to do it as fast as I can, that's all. My target
15 date is to get it out by the end of the week.

16 MS. KANE: Thank you, Your Honor.

17 JUDGE SIPPEL: And I'm -- I have -- I've got a lot of help
18 this time, so bear with me.

19 MS. KANE: We understand you have a lot to do.

20 JUDGE SIPPEL: All right. And, Mr. Stenger, I'm sorry if
21 I was little sharp today. I've got a head cold and this is tough
22 work for me.

23 MR. STENGER: Your Honor, I --

24 JUDGE SIPPEL: But I think you've all done an outstanding
25 job, and you sound like you're really interested in seeing this

1 case to its conclusion, and I'm with you on that.

2 MR. STENGER: Your Honor, I didn't take anything as being
3 sharp, and I also didn't intend to criticize the Bureau in any way.
4 I just want to make sure that I'm understanding what's supposed to
5 be in a trial brief, and how Your Honor intends to conduct the
6 hearing, because I haven't done one of those comparative broadcast
7 hearings in a few years.

8 JUDGE SIPPEL: Well, they haven't been done since the
9 early '90s, mid-90's.

10 MR. STENGER: I'm a little rusty on that.

11 JUDGE SIPPEL: We've changed our procedure a little bit,
12 but it -- enough said. Mr. Kirk, you also are participating in
13 this. To the extent you are, I appreciate your patience and
14 contribution.

15 MR. KIRK: Thank you, Your Honor.

16 JUDGE SIPPEL: I can't see what time it is. Is that five
17 to twelve?

18 MS. KANE: It is, Your Honor.

19 JUDGE SIPPEL: We are in recess. Thank you very much.

20 (Whereupon, the above-entitled matter went off the record
21 at 11:56 a.m.)

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Maritime Communications/Land Mobile, LLC

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Date of Hearing

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November 4, 2014

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